

FILED 5 AUG '16 15:12USDC-ORP

AO 451 (Rev. 01/09) Clerk's Certification of a Judgment to be Registered in Another District

UNITED STATES DISTRICT COURT

for the

Northern District of Oklahoma

'16-MC-406

Trinity Chemical Industries, LLC

Plaintiff

v.

Element Alternative Energy, LLC

Defendant

Civil Action No. 16-cv-110-CVE-PJC

CLERK'S CERTIFICATION OF A JUDGMENT TO BE REGISTERED IN ANOTHER DISTRICT

I certify that the attached judgment is a copy of a judgment entered by this court on (date) 04/11/2016 .

I also certify that, as appears from this court's records, no motion listed in Fed. R. App. P. 4(a)(4)(A) is pending before this court and that no appeal has been filed or, if one was filed, that it is no longer pending.

Date: JUN 17 2016

CLERK OF COURT

Mark C. McCartt, Clerk

Signature of Clerk or Deputy Clerk

#68583

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA



TRINITY CHEMICAL
INDUSTRIES, LLC,

Plaintiff,

v.

ELEMENT ALTERNATIVE
ENERGY, LLC,

Defendant.

Case No. 16-CV-0110-CVE-PJC

DEFAULT JUDGMENT

This matter comes on for consideration of Plaintiff's Motion for Default Judgment (Dkt. # 10). Plaintiff filed this case alleging that defendant breached a contract and defaulted on a promissory note related to a Railcar Service Agreement between the parties. Plaintiff seeks monetary damages in the accelerated amount due under the agreement, plus interest and costs. Plaintiff filed Plaintiff's Motion for Entry of Default by the Clerk (Dkt. # 8), and the Court Clerk entered defendant's default (Dkt. # 9) on March 28, 2016. Pursuant to Fed. R. Civ. P. 55(a), default judgment is appropriate when "a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise." The Court finds that defendant has failed to file a responsive pleading or otherwise defend against plaintiff's claims, and default judgment should be entered in favor of plaintiff and against defendant.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion for Default Judgment (Dkt. # 10) is granted.

United States District Court
Northern District of Oklahoma

I hereby certify that the foregoing
is a true copy of the original on file
in this court.

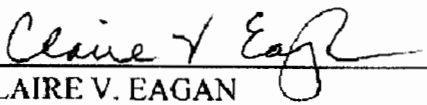
Mark C. McCart

By

Deputy

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that default judgment is hereby entered in favor of plaintiff Trinity Chemical Industries, LLC and against defendant Element Alternative Energy, LLC in the principal amount of \$1,194,929.77, plus pre-judgment interest at the contractual rate of 18 percent per annum in the amount of \$35,847.89 through February 22, 2016, plus pre-judgment interest at that same rate from February 22, 2016 to this date; plus post-judgment interest thereon from this date until paid at the rate of .55 percent per annum,¹ plus the costs of this action.

DATED this 11th day of April, 2016.



CLAIRE V. EAGAN
UNITED STATES DISTRICT JUDGE

¹ Plaintiff asserts that it is entitled to post-judgment interest in the amount of 18 percent per annum, which it asserts is consistent with the terms of the agreement between the parties. Dkt. # 10, at 2. “An agreement to apply a post-judgment interest rate other than that [set by statute] is enforceable so long as the parties indicate their intent to override the statute using ‘clear, unambiguous, and unequivocal language.’” Newmont U.S.A. Ltd. Inc. v. Insurance Co. of N. Am., 615 F.3d 1268, 1276-77 (10th Cir. 2010) (quoting Society of Lloyd’s v. Reinhart, 402 F.3d 982, 1004 (10th Cir. 2005)). The contractual 18 percent interest rate applies generally to payments due under the contract, but does not “clearly, unambiguously, and unequivocally” demonstrate the parties’ intent to utilize this rate for the purposes of post-judgment interest. See Dkt. # 10-1, at 9 (“In the event Customer shall be in default in the payment of rent or any other amount due under this Agreement, Customer shall pay TCIX as additional rental interest on such unpaid sum from its due date to the date of payment by Customer at a rate equal to one and one half percent (1.5%) per month [18% per annum] or the maximum rate permitted by law, whichever is less.”). The Court thus utilizes the statutory post-judgment interest rate.